



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
-----------------	-------------	----------------------	---------------------	------------------

10/806,832

03/23/2004

Yuko Nishikawa

81205 7114

4230

37123 7590 01/06/2010
FITCH EVEN TABIN & FLANNERY
120 SOUTH LASALLE STREET
SUITE 1600
CHICAGO, IL 60603-3406

EXAMINER

TAYLOR, JOSHUA D

ART UNIT

PAPER NUMBER

2426

MAIL DATE

DELIVERY MODE

01/06/2010

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.



UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/806,832
Filing Date: March 23, 2004
Appellant(s): NISHIKAWA ET AL.

Joseph M. Marinelli
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed September 21, 2009 appealing from the Office action mailed April 1, 2009.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments

The statement of the status of claims contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is substantially correct. The changes are as follows: Claims 1-4 and 6-15 are rejected under 35 USC § 103(a) given Ellis et al. (Pat. No.: US 7,065,709) in view of Robertson *et al.* (Pat. No.:

Art Unit: 2426

US 7,149,983), *and further in view of Billmaier et al. (Pat. No.: US 7,159,177)*, as stated in the Office Action dated April 1, 2009.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

Ellis et al. (Pat. No.: US 7,065,709) published June 20, 2006

Robertson et al. (Pat. No.: US 7,149,983) published December 12, 2006

Billmaier et al. (Pat. No.: US 7,159,177) published January 2, 2007

Robarts et al. (Pub. No.: US 2005/0278741) published December 15, 2005

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Art Unit: 2426

Claims 1-4 and 6-15 rejected under 35 U.S.C. 103(a) as being unpatentable over Ellis et al. (Pat. No.: US 7,065,709) in view of Robertson et al. (Pat. No.: US 7,149,983), and further in view of Billmaier et al. (Pat. No.: US 7,159,177).

Regarding claim 1, Ellis discloses **a method comprising: providing access to characterizing descriptors as individually correspond to a plurality of discrete selectable items of data** (Fig. 9a, column 12, line 59 – column 13, line 5); **providing at least a first and a second characterizing descriptor filter** (Fig. 9a, column 12, line 59 – column 13, line 5. Ellis provides several characterizing descriptor fields, such as Actor, Genre, and Start Time.), **and displaying at least a portion of the characterizing descriptors as corresponds to a present setting of the first and second plurality of user-selectable characterizing descriptor filter criteria** (Fig. 9a, column 13, lines 6-16. Ellis displays the selection of a descriptor, such as “Bruce Willis” for Actor.). Ellis does not disclose constantly displaying a plurality of the choices for each filter. However, in analogous art, Robertson discloses **simultaneously displaying: a first plurality of user-selectable characterizing descriptor filter criteria as corresponds to a first characterizing descriptor filter** (Fig. 38, column 31, lines 16-29); **a second plurality of user-selectable characterizing descriptor filter criteria as corresponds to a second characterizing descriptor filter** (Fig. 38, column 31, lines 16-29. Robertson discloses displaying several separate lists of search criteria, all of which simultaneously display selectable characterizing descriptors). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify Ellis to include the teachings of Robertson to allow for the filters to display several characterizing descriptors at once. This would have produced a desirable result, in that because users would be able to continue to see other choices after they

Art Unit: 2426

had made a selection, they could more easily change a previous selection in the future by being kept aware of other options.

Neither Ellis nor Robertson explicitly disclose wherein **the first plurality of user-selectable characterizing descriptor filter criteria is displayed as a horizontal row of user-selectable characterizing descriptor filter criteria; the second plurality of user-selectable characterizing descriptor filter criteria is displayed as a horizontal row of user-selectable characterizing descriptor filter criteria; and the portion of the characterizing descriptors as corresponds to a present setting of the first and second plurality of user-selectable characterizing descriptor filter criteria is displayed as a horizontal row of characterizing descriptors positioned between the first plurality of user-selectable characterizing descriptor filter criteria and the second plurality of user-selectable characterizing descriptor filter criteria.** However, in analogous art, Billmaier teaches that user interface can be configured so that there are horizontal and vertical rows and columns containing related information concerning television programming (Fig. 10, column 12, lines 5-54). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to have a display organized in several horizontal sections. This would have produced predictable and desirable results, in that the user would have an aesthetically pleasing and functionally understandable visual representation of the filtered content.

Regarding claim 2, the combined teachings of Ellis, Robertson and Billmaier disclose **the method of claim 1, and Ellis further discloses wherein displaying at least a portion of the characterizing descriptors as corresponds to a present setting of the first and second plurality of user-selectable characterizing descriptor filter criteria further comprises not**

Art Unit: 2426

displaying any of the characterizing descriptors as do not correspond to the present setting of the first and second plurality of user-selectable characterizing descriptor filter criteria (Fig. 9a, column 12, line 59 – column 13, line 5). In Fig. 9a, only the selected characterizing descriptors are displayed.

Regarding claim 3, the combined teachings of Ellis, Robertson and Billmaier disclose **the method of claim 1**, and Ellis further discloses **wherein providing access to characterizing descriptors as individually correspond to a plurality of discrete selectable items of data further comprises providing access to textual characterizing descriptors as individually correspond to a plurality of discrete selectable items of data** (Fig. 9a). The characterizing descriptors disclosed by Ellis are textual.

Regarding claim 4, the combined teachings of Ellis, Robertson and Billmaier disclose **the method of claim 1**, and Ellis further discloses **wherein providing access to characterizing descriptors as individually correspond to a plurality of discrete selectable items of data further comprises providing access to characterizing descriptors as individually correspond to a plurality of discrete selectable items of audio/visual content** (column 12, lines 39-58). The discrete selectable items of data disclosed in claim 1 are television programs in Ellis, which are audio/visual content.

Regarding claim 6, the combined teachings of Ellis, Robertson and Billmaier disclose **the method of claim 4**, and Ellis further discloses **wherein providing access to characterizing descriptors as individually correspond to a plurality of discrete selectable items of data further comprises providing access to characterizing descriptors that comprise at least one**

Art Unit: 2426

of: a programming network identifier; a broadcast starting time; a description of the audio/visual content; content media source (Fig. 9a, column 13, lines 17-33. One of the categories is Start Min.).

Regarding claim 7, the combined teachings of Ellis, Robertson and Billmaier disclose **the method of claim 4**, and Ellis further discloses **wherein the plurality of discrete selectable items of audio/visual content are embodied in a plurality of media** (column 8, lines 8-20).

Regarding claim 8, the combined teachings of Ellis, Robertson and Billmaier disclose **the method of claim 1**, and Ellis further discloses **wherein the present setting of the first and second plurality of user-selectable characterizing descriptor filter criteria is selected in response to a remote control device** (column 8, lines 30-32).

Regarding claim 9, the combined teachings of Ellis, Robertson and Billmaier disclose **the method of claim 1**, and Ellis further discloses **wherein the present setting of the first and second plurality of user-selectable characterizing descriptor filter criteria is selected in response to a remote control device by scrolling through candidate settings of the first and second plurality of user-selectable characterizing descriptor filter criteria** (column 12, lines 35-38. Ellis teaches scrolling as a method for browsing through lists).

Regarding claim 10, Ellis discloses **an interactive data display system** (column 6, lines 4-16) **comprising: characterizing descriptors as individually correspond to a plurality of discrete selectable items of data** (Fig. 9a, column 12, line 59 – column 13, line 5); **at least a first and a second characterizing descriptor filter** (Fig. 9a, column 12, line 59 – column 13, line 5. Ellis provides several characterizing descriptor fields, such as Actor, Genre, and Start

Art Unit: 2426

Time.); **and control circuitry** (column 6, lines 4-16) **that displays at least a portion of the characterizing descriptors as corresponds to a present setting of the first and second plurality of user-selectable characterizing descriptor filter criteria** (Fig. 9a, column 13, lines 6-16. Ellis displays the selection of a descriptor, such as “Bruce Willis” for Actor.). Ellis does not disclose constantly displaying a plurality of the choices for each filter. However, in analogous art, Robertson discloses **simultaneously displaying: at least one of a first plurality of user-selectable characterizing descriptor filter criteria as corresponds to the first characterizing descriptor filter** (Fig. 38, column 31, lines 16-29); **at least one of a second plurality of user-selectable characterizing descriptor filter criteria as corresponds to the second characterizing descriptor filter** (Fig. 38, column 31, lines 16-29. Robertson discloses displaying several separate lists of search criteria, all of which simultaneously display selectable characterizing descriptors). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify Ellis to include the teachings of Robertson to allow for the filters to display several characterizing descriptors at once. This would have produced a desirable result, in that because users would be able to continue to see other choices after they had made a selection, they could more easily change a previous selection in the future by being kept aware of other options.

Neither Ellis nor Robertson explicitly disclose wherein **the first plurality of user-selectable characterizing descriptor filter criteria is displayed as a horizontal row of user-selectable characterizing descriptor filter criteria; the second plurality of user-selectable characterizing descriptor filter criteria is displayed as a horizontal row of user-selectable characterizing descriptor filter criteria; and the portion of the characterizing descriptors**

Art Unit: 2426

as corresponds to a present setting of the first and second plurality of user-selectable characterizing descriptor filter criteria is displayed as a horizontal row of characterizing descriptors positioned between the first plurality of user-selectable characterizing descriptor filter criteria and the second plurality of user-selectable characterizing descriptor filter criteria. However, in analogous art, Billmaier teaches that user interface can be configured so that there are horizontal and vertical rows and columns containing related information concerning television programming (Fig. 10, column 12, lines 5-54). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to have a display organized in several horizontal sections. This would have produced predictable and desirable results, in that the user would have an aesthetically pleasing and functionally understandable visual representation of the filtered content.

Regarding claim 11, the combined teachings of Ellis, Robertson and Billmaier disclose **the interactive data display system of claim 10, and Ellis discloses further comprising: a remote control device for selecting the present setting of the first and second plurality of user-selectable characterizing descriptor filter criteria** (column 8, lines 30-32).

Regarding claim 12, Ellis discloses **an interactive program guide system** (column 6, lines 4-16) **comprising: characterizing descriptors as individually correspond to a plurality of discrete selectable items of audio/visual content** (Fig. 9a, column 12, line 59 – column 13, line 5); **at least a first and a second characterizing descriptor filter** (Fig. 9a, column 12, line 59 – column 13, line 5. Ellis provides several characterizing descriptor fields, such as Actor, Genre, and Start Time.); **control circuitry** (column 6, lines 4-16) **that displays at least a portion of the characterizing descriptors as corresponds to a present setting of the first and**

Art Unit: 2426

second plurality of user-selectable characterizing descriptor filter criteria (Fig. 9a, column 13, lines 6-16. Ellis displays the selection of a descriptor, such as “Bruce Willis” for Actor.). Ellis does not disclose constantly displaying a plurality of the choices for each filter. However, in analogous art, Robertson discloses **simultaneously displaying: at least one of a first plurality of user-selectable characterizing descriptor filter criteria as corresponds to the first characterizing descriptor filter** (Fig. 38, column 31, lines 16-29); **at least one of a second plurality of user-selectable characterizing descriptor filter criteria as corresponds to the second characterizing descriptor filter** (Fig. 38, column 31, lines 16-29. Robertson discloses displaying several separate lists of search criteria, all of which simultaneously display selectable characterizing descriptors). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify Ellis to include the teachings of Robertson to allow for the filters to display several characterizing descriptors at once. This would have produced a desirable result, in that because users would be able to continue to see other choices after they had made a selection, they could more easily change a previous selection in the future by being kept aware of other options.

Neither Ellis nor Robertson explicitly disclose wherein **the first plurality of user-selectable characterizing descriptor filter criteria is displayed as a horizontal row of user-selectable characterizing descriptor filter criteria; the second plurality of user-selectable characterizing descriptor filter criteria is displayed as a horizontal row of user-selectable characterizing descriptor filter criteria; and the portion of the characterizing descriptors as corresponds to a present setting of the first and second plurality of user-selectable characterizing descriptor filter criteria is displayed as a horizontal row of characterizing**

Art Unit: 2426

descriptors positioned between the first plurality of user-selectable characterizing descriptor filter criteria and the second plurality of user-selectable characterizing descriptor filter criteria. However, in analogous art, Billmaier teaches that user interface can be configured so that there are horizontal and vertical rows and columns containing related information concerning television programming (Fig. 10, column 12, lines 5-54). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to have a display organized in several horizontal sections. This would have produced predictable and desirable results, in that the user would have an aesthetically pleasing and functionally understandable visual representation of the filtered content.

Regarding claim 13, the combined teachings of Ellis, Robertson and Billmaier disclose **the interactive program guide system of claim 12**, and Ellis discloses **further comprising: a remote control device for selecting the present setting of the first and second plurality of user-selectable characterizing descriptor filter criteria** (column 8, lines 30-32).

Regarding claim 14, the combined teachings of Ellis, Robertson and Billmaier disclose **the interactive program guide system of claim 13**, and Ellis further discloses **wherein the remote control device comprises at least one key for scrolling through candidate settings of the first and second plurality of user-selectable characterizing descriptor filter criteria** (column 12, lines 35-38. Ellis teaches scrolling as a method for browsing through lists).

Regarding claim 15, the combined teachings of Ellis, Robertson and Billmaier disclose **the interactive program guide system of claim 14**, and Ellis further discloses **wherein the remote control device further comprises at least one key for moving a focus from one**

Art Unit: 2426

characterizing descriptor filter to another characterizing descriptor filter (column 13, lines 6-10).

Claims 5 and 16-17 rejected under 35 U.S.C. 103(a) as being unpatentable over Ellis et al. (Pat. No.: US 7,065,709) in view of Robertson et al. (Pat. No.: US 7,149,983) and Billmaier et al. (Pat. No.: US 7,159,177) as applied to claims 4 and 12 above, and further in view of Robarts et al. (Pub. No.: US 2005/0278741).

Regarding claim 5, the combined teachings of Ellis, Robertson and Billmaier disclose the method of claim 4, however they do not explicitly disclose **simultaneously displaying at least one graphic image as individually corresponds to the at least a portion of the characterizing descriptors as corresponds to a present setting of the first and second plurality of user-selectable characterizing descriptor filter criteria**. However, Robarts does (Fig. 6, element 190, paragraph [0071]. The preview window is a graphic image). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify Ellis and Robertson to include the teachings of Robarts, so that a user could see a program related to what they were searching for. This would have produced a desirable feature, in that the user could see a graphical example of their search.

Regarding claim 16, the combined teachings of Ellis and Robertson disclose the interactive program guide system of claim 12, however they do not explicitly disclose **wherein the control circuitry further simultaneously displays a program of audio/visual content**. However, Robarts does (Fig. 6, element 190, paragraph [0071]). Therefore, it would have been

Art Unit: 2426

obvious to one of ordinary skill in the art at the time of the invention to modify Ellis and Robertson to include the teachings of Robarts, so that a user could continue to watch a program while searching for another program. This would have produced a desirable feature, in that users would not have to stop watching a program in order to search for another program, increasing the likelihood that the search tool would be used.

Regarding claim 17, the combined teachings of Ellis and Robertson disclose the interactive program guide system of claim 12, however they do not explicitly disclose **wherein the control circuitry further simultaneously displays a preview of a discrete selectable item of audio/visual content as corresponds to the present setting of the first and second plurality of user-definable characterizing descriptor filter criteria**. However, Robarts does (Fig. 6, element 190, paragraph [0071]). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify Ellis and Robertson to include the teachings of Robarts, so that a user could continue to watch a program while searching for another program. This would have produced a desirable feature, in that users would not have to stop watching a program in order to search for another program, increasing the likelihood that the search tool would be used.

(10) Response to Argument

A. Rejection of claims 1-4 and 6-15 over Ellis in view of Robertson and Billmaier

1. Independent Claims 1, 10 and 12

On page 10, beginning on line 15, Applicant states:

In making this rejection, the Examiner relies upon Ellis's presentation of an interactive program guide system, and more particularly, upon Ellis's disclosing "several characterizing descriptive fields, such as actor, genre, and start time." As acknowledged by the Examiner, this is different from the Applicants' claimed approach. For example, in claim 1, the Applicants specify "simultaneously displaying: a first plurality of user-selectable characterizing descriptor filter criteria," "a second plurality of user-selectable characterizing descriptor filter criteria as corresponds to the second characterizing descriptor filter," and "a portion of the characterizing descriptors as corresponds to a present setting of the first and second plurality of user-selectable characterizing descriptor filter criteria." Applicants further specify that "the portion of the characterizing descriptors as corresponds to a present setting of the first and second plurality of user-selectable characterizing descriptor filter criteria displayed as a horizontal row of characterizing descriptors positioned between the first plurality of user-selectable characterizing descriptor filter criteria and the second plurality of user-selectable characterizing descriptor filter criteria." Examples of such features are exemplified above in the discussion of Applicants' FIG. 4. Independent claims 10 and 12 include similar limitations.

Examiner agrees with Applicant's statement, in that Ellis does not teach every element of Applicant's claimed invention. Examiner submits that Ellis discloses an electronic program guide which has the capability to "provide the user with an opportunity to define a Boolean expression. The user may construct a Boolean expression by selecting criteria such as attribute types, attributes, logical operators, and sorting criteria (column 12, line 65 – column 13, line 1)." In Figure 9a of Ellis, a user has *selected* from "a first plurality of user-selectable characterizing descriptor filter criteria" in selecting Bruce Willis as "Actor", and further has *selected* from "a second plurality of user-selectable characterizing descriptor filter criteria" in selecting Action as "Genre." Thus, Ellis allows a user to "narrow down" programming choices based on multiple pluralities of characterizing descriptor filter criteria. Although Ellis allows users to *select* from a plurality of characterizing descriptor filter criteria, Ellis does not disclose *simultaneously*

Art Unit: 2426

displaying a plurality of characterizing descriptor filter criteria. In order to teach this limitation, Examiner relies on Robertson, which will be discussed below in response to Applicant's arguments concerning Robertson.

On page 11, beginning on line 3, Applicant states:

Ellis does not disclose an apparatus or method that simultaneously displays user-selectable characterizing descriptor criteria and characterizing descriptors corresponding to a present setting of the first and second characterizing filter criteria. To meet this deficiency in Ellis, the Examiner relies upon Robertson, and more particularly upon Robertson disclosing "several separate lists of search criteria, all of which simultaneously displays selectable characterizing descriptors." As acknowledged by the Examiner, however, the disclosures in Ellis and Robertson are still deficient because neither reference discloses "the first plurality of user-selectable characterizing descriptor filter criteria is displayed as a horizontal row of user-selectable characterizing descriptor filter criteria; the second plurality of user-selectable characterizing descriptor filter criteria is displayed as a horizontal row of user-selectable characterizing descriptor filter criteria; and the portion of the characterizing descriptors as correspond to a present setting of the first and second plurality of user-selectable characterizing descriptor filter criteria is displayed as a horizontal row of characterizing descriptors positioned between the first plurality of user-selectable characterizing descriptor filter criteria and the second plurality of user-selectable characterizing descriptor filter criteria."

Examiner agrees with Applicant's statement, in that the combined teaching of Ellis and Robertson does not teach every element of Applicant's claimed invention. Rather, Robertson teaches *displaying* a plurality of characterizing descriptor filter criteria (Figure 38, column 31, lines 16-29). Therefore, Examiner contends that one of ordinary skill in the art at the time of the invention would have found it obvious to modify Ellis to allow for the plurality of characterizing descriptor filter criteria to be displayed simultaneously, as this would have produced a predictable and desirable result, in that because users would be able to continue to see other choices after they had made a selection, they could more easily change a previous selection in the future by being kept aware of other options.

Art Unit: 2426

On page 11, beginning on line 18, Applicant states:

To meet this deficiency in Ellis and Robertson, the Examiner relies upon Billmaier, which Applicants submit is clear error. The Examiner states that "Billmaier teaches that user interface can be configured so that there are horizontal and vertical rows in columns containing related information concerning television programming (Fig. 10, Col. 12, lines 5-54).⁴ The Examiner then suggests that "it would have been obvious to one of ordinary skill in the art that at the time of the invention to have a display organized in several horizontal sections."

Applicant respectfully disagrees with the Examiner's characterization of Billmaier.

Billmaier discloses in Fig. 10 (reproduced at the right), a vertical listing of programs (with "3rd Rock From The Sun" selected as the focus area 302) surrounded by quadrants 1000a - 1000d. The quadrant referenced as 1000a contains program information related to the program in focus area 302. The quadrant referenced as 1000b is a car advertisement. The quadrant referenced as 1000c is branding information for the cable provider. The quadrant referenced as 1000d presents the user with generic instructions on selecting a program. The disclosure in FIG. 10 is further explained in column 12, lines 4-54 of Billmaier. In particular, Billmaier discloses that "the intersection of two displayed sequences 300 *may generate quadrants 1000 that may be used for various purposes*. In one embodiment, the quadrants 1000 are context-sensitive regions that display supplemental information, advertising, or the like, depending on the card 200 in the focus area 302. In another embodiment, one or more quadrants 1000 may display information targeted to the user based on user profile information within the ITV system 100." (emphasis added)

Importantly, Billmaier does not disclose that quadrants 1000a - 1000d are in the same "horizontal row." Rather, Billmaier discloses that "the intersection of two displayed sequences 300a-b may generate quadrants 1000 that may be used for various purposes." (Billmaier, column 12, lines 4-8) Quadrants 1000a - 1000d are situated at the corners of, and separated by, intersecting display sequences 300a-b. This point is reinforced by the disclosure in Billmaier that "in alternative embodiments, a single vertical or horizontal sequence 300a-b may result in the creation of hemispheres (not shown) rather than quadrants 1000." (Billmaier at column 12, lines 48-51) In other words, the arrangement of "quadrants" or "hemispheres" is dictated by the configuration of horizontal or vertical sequences 300a-b, and not a design to arrange the information into rows. More particularly, the information in these quadrants cannot be fairly viewed as comprising "rows" because of the intervening vertically-displayed programming information.

Examiner contends that although there may be alternate embodiments of Billmaier in which there are not the same number of columns and rows as shown in Fig. 10, the fact that Fig. 10 demonstrates that separate, distinct areas can be laid out in such a manner on a television

Art Unit: 2426

display, with other areas located above, below, to the left or to the right, teaches that one of ordinary skill in the art at the time of the invention would have been aware that such a layout were possible.

Examiner disagrees that the information in these quadrants cannot fairly be viewed as comprising rows. Again, Examiner concedes that a single reference could not be found which teaches Applicant's invention in its entirety. However, Examiner contends that the combined teaching of Ellis and Robertson disclose teachings which would lead one of ordinary skill in the art at the time of the invention to construct an electronic program guide which was able to *perform the same functionality* as Applicant's claimed invention, but not *in the exact layout* as Applicant's claimed invention; that is, such an electronic program guide would allow a user to filter characterizing descriptors of television programs in order to find programming that matched the criteria of said user. Thus, returning to Applicant's assertion concerning quadrants being viewed as rows, Examiner contends that Billmaier is used *purely as a representation of a possible electronic program guide layout*.

Thus, one of ordinary skill in the art at the time of the invention could take the concept of Ellis' Figure 9a, and expand it based on the teachings from Robertson's Figure 38 to achieve a display with simultaneously displayed multiple pluralities of characterizing descriptor filter criteria. At this point, however, said one of ordinary skill may conclude that a new display layout is needed, as Ellis' Figure 9a may become too cramped with the addition of extra information, and Robertson's Figure 38 is less conducive to viewing from a television, as the words may be too small to read from a distance. Examiner asserts that the teaching of Billmaier of an electronic program guide layout comprising a three-by-three matrix would be sufficient for said one of

Art Unit: 2426

ordinary skill to choose to arrange the filters taught by Ellis and Robertson in such a manner as claimed by Applicant. This would have produced predictable and desirable results, in that the functionality of the filtering process would be maintained, while elements of said process would be displayed to a user in a manageable, easy to read manner as taught by Billmaier's display.

On page 13, beginning on line 3, Applicant states:

In addition, there is no correlation between information in the quadrants of Billmaier because the quadrants are "used for various purposes." (Billmaier column 12, lines 5-6) For example, quadrant 1000c, which displays the cable provider's branding identification, bears no correlation with quadrant 1000b, which displays a car advertisement. Similarly, quadrant 1000d displays user instructions that bear no correlation to quadrant 1000a, which displays program information. Therefore, Billmaier does not disclose arranging quadrants as "rows" of information. Billmaier merely suggests dividing a display into quadrants, and displaying information in those quadrants related or unrelated to a program that is selected amongst a vertical row of programs dissecting the quadrants.

Although the quadrants may be used for different purposes, Billmaier discloses that one of these purposes may be to display "supplemental information (column 12, lines 7-8)," which means that the information in every section of Figure 10 can be related.

Applicant continues on page 13, line 12:

Moreover, the arrangement of quadrants or hemispheres in Billmaier does not contribute to the functionality of the interface because the quadrants are not "user-selectable." The quadrants merely display information that may change depending on the program selected as the focus area. Applicant, on the other hand, provides for a display in which the filter criteria are displayed as horizontal rows of user-selectable items and where the results of the present setting of the filter criteria are displayed in a horizontal row between the rows of user-selectable filter criteria. As described in paragraphs [0036-0039] and [0042], the user can scroll along the rows of first and second filter criteria to select other filter criterion. The resulting characterizing descriptors corresponding to the selected filter criteria are displayed between the rows of filter criteria. The user can easily scroll upward or downward from the row of results to select different filter criteria. As the user selects different filter criteria, the results change. The

Art Unit: 2426

orientation of filter criteria and results as described by Applicants permit the user to conveniently select different filter criteria by moving the areas of focus and simultaneously view the results in close visual proximity to the filter criteria. To modify Billmaier's quadrants to make them user selectable would change their principle of operation in the absence of any reason to make such a change in the absence of Applicants' own teachings.

Given the failure of Billmaier to meet the deficiencies in the disclosures of Ellis and Robertson, the Applicant observes and submits that modifying either Ellis or Robertson based on Billmaier to include user-selectable characterizing descriptor filter criteria in horizontal rows and characterizing descriptors corresponding to the present setting of the first and second user-selectable characterizing descriptor filter criteria is hardly obvious and is certainly not a mere design choice. The quadrants disclosed in Billmaier are not arranged in rows; information in one quadrant is not correlated with information in the other quadrant; and the quadrants are not "user-selectable." Therefore, the mere suggestion in Billmaier of arranging a display into a quadrant-styled configuration does not suggest modifying Ellis and Robertson to arrange the first and second filter criteria in rows above and below characterizing descriptors corresponding to the first and second user-selectable characterizing descriptor filter criteria.

Examiner contends that one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). The teachings of Ellis and Robertson disclose the concept of filtering data, but from that teaching there are literally an infinite number of ways in which to display these filters to users. Describing one of these specific configurations may in some cases have novelty; however, in the instant case Examiner believes that there was sufficient teaching in the prior art of Billmaier describing displays similar to that of Applicant's that one of ordinary skill in the art at the time of the invention would have found it obvious to create Applicant's particular display.

2. Dependent Claims 2-4, 6-9, 11 and 13-15

Applicant makes no further arguments specific to these dependent claims. Thus, please refer to Examiner's rebuttal above regarding Applicant's arguments.

Art Unit: 2426

B. Rejection of claims 5 and 16-17 over Ellis in view of Robertson and Billmaier and further in view of Robarts

Applicant makes no further arguments specific to these dependent claims. Thus, please refer to Examiner's rebuttal above regarding Applicant's arguments.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Josh Taylor/

Examiner, Art Unit 2426

Conferees:

/Joseph P. Hirl/
Supervisory Patent Examiner, Art Unit 2426
December 22, 2009

Scott Beliveau

/Scott Beliveau/
Supervisory Patent Examiner, Art Unit 2427